

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: GRANULATED SUGAR) File No. 24-md-3110
ANTITRUST LITIGATION) (JWB/DTS)

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)
) St. Paul, Minnesota
) October 28, 2024
) 1:16 p.m.
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)
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BEFORE THE HONORABLE JERRY W. BLACKWELL
UNITED STATES DISTRICT COURT JUDGE
AND THE HONORABLE DAVID T. SCHULTZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(STATUS CONFERENCE)

Proceedings recorded by mechanical stenography;
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APPEARANCES:

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d/b/a Northern Haserot:

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and Isabella Benmeleh:

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Johnson, Stacy Kurtz,
Donald Friedman, Thomas
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Olivares and James
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For Commercial Class
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Moretti's Ristorante &
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Club, LLC; RRG
Scottsdale Pizza LLC
d/b/a Rosati's of
Scottsdale; Sugar Bake
Shop, Inc.; Up at 4,
Inc. d/b/a/ Great
Harvest Bread Co.
(Duluth, MN); and
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For the Defendants
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13 Also present on behalf of Plaintiffs:

14 William Hoes
15 Vildan Teske
16 Caitlin Keiper
17 Lee Albert
18 Thomas Burt
19 Bryan Clobes
20 Mindee Reuben
21 Anthony Carter
22 Kimberly Justice
23 Sarah Sterling Aldridge
24 Robin Zwerling
25 Michelle Clerkin
Elizabeth Castillo
Dan Hedlund
Linda Nussbam
Stacey Slaughter
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Heidi Siltan
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Josh Rissman
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1 Mike Roberts
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2 Elizabeth Fegan
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3 Scott Martin
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4 Andrew Wolinsky
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5 Peter Prieto
Greg Asciolla
6 Alexander Barnett

7
Also present on behalf of Defendants:

8 Jessica Nelson
Amelia Rasmussen
9 Gina Tonn
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P R O C E E D I N G S

I N O P E N C O U R T

THE COURT: Please be seated.

UNIDENTIFIED SPEAKER: Afternoon, Your Honors.

THE COURT: Good afternoon. Let's get the case called first before I give any more good afternoons.

THE COURTROOM DEPUTY: We are here in the matter of In Re Granulated Sugar Antitrust, Case Number 24-md-3110 JWB/DTS.

THE COURT: So I won't have all of you note your appearances. I'll just ask you to have signed then the sign-in sheet, and that would be my way of knowing that you were here and having a record of it. But for those who are sitting at the speaking table, why don't you identify yourselves.

MR. GUSTAFSON: Good afternoon, Your Honor. Dan Gustafson on behalf of the plaintiffs.

THE COURT: Good afternoon.

MR. RAITER: Good afternoon, Your Honor. Shawn Raiter, Larson King, on behalf of the plaintiffs.

THE COURT: Good afternoon.

MS. BERNAY: Good afternoon, Your Honor. Alexandra Bernay from Robbins Geller Rudman & Dowd on behalf of the consumer plaintiffs.

1 THE COURT: Good afternoon.

2 MR. BARILE: Good afternoon, Your Honor. Peter
3 Barile from Lowey Dannenberg here on behalf of the consumer
4 plaintiffs.

5 THE COURT: All right. Good afternoon to you all.

6 MR. BUTERMAN: Good afternoon, Your Honor.
7 Lawrence Buterman from Latham & Watkins on behalf of United
8 Sugar.

9 THE COURT: Good afternoon, Mr. Buterman.

10 MS. GREENWALD: Good afternoon, Your Honor. Elyse
11 Greenwald from Latham & Watkins on behalf of United Sugar.

12 THE COURT: Good afternoon.

13 MR. PETKOSKI: Good afternoon, Your Honor.
14 Djordje Petkoski, A&O Shearman, on behalf of the Domino
15 defendants.

16 THE COURT: Good afternoon to you.

17 MR. STOJIKOVIC: Good afternoon, Your Honor.
18 Kosta Stojilkovic from Wilkinson Stekloff on behalf of
19 Cargill.

20 THE COURT: Good afternoon.

21 MS. JACOBSEN: Good afternoon. Vanessa Jacobsen
22 from Eimer Stahl for Michigan Sugar Company.

23 THE COURT: Good afternoon. And we have a number
24 of lawyers on Zoom I am told. And for their information,
25 I'm also told that there's been some audio problems with the

1 Zoom that at least as of this point are corrected. They are
2 subject to not being corrected as we proceed along; and so
3 if that occurs, then hang on. It may be back. And if it
4 isn't, then I can promise you it will be better the next
5 time or we'll be in a different courtroom.

6 So why don't I first start with whether there are
7 any kind of general remarks. I'd like to hear whether --
8 what's been happening since we last met and if there's been
9 nothing, you just all are waiting for me, that's fine.

10 But let me hear first what's going on.

11 Mr. Gustafson.

12 MR. GUSTAFSON: I think the answer is we've been
13 waiting for you, Your Honor. We have kept -- had
14 conversations with defendants of course on various matters,
15 but all of it depends on the leadership appointments before
16 we can really get going.

17 On the Wistisen service matter, which is a little
18 bit later in the agenda, I can tell you that he has retained
19 counsel and we have been in contact with those counsel and
20 that service issue is going to be worked out in the short
21 order.

22 But that's really all that's new, I would say.

23 THE COURT: Well, that's the 1 and 2. And so
24 really nothing much more to say about Mr. Wistisen and the
25 Commodity Information. That that's in progress?

1 MR. GUSTAFSON: Yeah. As I said, he's retained
2 counsel. They've agreed to accept service. We just haven't
3 gotten the stipulation finished yet, and it will be a few
4 weeks but it will be before the consolidated complaints.

5 THE COURT: All right. Thank you.

6 MR. GUSTAFSON: You're welcome.

7 THE COURT: Mr. Buterman, are you the spokesperson
8 today as well?

9 MR. BUTERMAN: I guess so, Your Honor.

10 THE COURT: Well, what do you have to say for
11 yourself?

12 MR. BUTERMAN: We agree with the plaintiffs.
13 There's really -- from our perspective, we're just waiting
14 for the leadership to be decided and then to see the
15 consolidated amended complaints.

16 THE COURT: All right. Thank you.

17 Then it's my objective to try to get this show on
18 the road then and to get -- to get the case going in earnest
19 and to get at discovery. So there will be quite a few
20 things that I say today that will help to bring some clarity
21 to where we are going.

22 I do not at all in any respect expect total
23 agreement from both sides of this. If I had it, it probably
24 wouldn't be an adversarial proceeding. But I've thought
25 about your case quite a lot and how I think I'd like to

1 proceed with it.

2 Let me first then kind of walk through some of the
3 decision points that were raised in the status letter that
4 you all sent. And I appreciated you all sending it.

5 I should tell you that I put in the agenda court
6 status conferences through year end next year just so you
7 can plan for them. The dates may, in some instances, be
8 subject to change. And also depending on how many issues
9 and what kind of issues you have each month to raise with
10 the Court, I may turn the proceeding -- our status updates
11 into kind of a two-day process. Not two whole days, but I
12 would just have you come in the day before, get together in
13 a conference room and hash it out, depending on the nature
14 of the issues and how many there are. And we're just going
15 to see how this evolves.

16 As is now, we'll keep it as a singular date as you
17 see in the agenda, but I'm certainly open to getting a room
18 in the court, having you hash it out, and I'd be perfectly
19 fine getting the agenda the afternoon before because the
20 agenda will simply reflect what's left that didn't get
21 hashed out. And if you have those kinds of meetings, either
22 I or Judge Schultz would be available on the day before,
23 come down there with the court reporter, and can make
24 certain rulings and put things on the record to get it
25 rolling.

1 I don't see a need for it now. I can foresee that
2 there may be before we are done, because we want to be --
3 keep close to this case and to keep it moving. And there
4 are certain cases where things seem to only get discussed at
5 the status hearing before the Court and the lawyers sort of
6 fall back to doing letter exchanges that aren't always the
7 most effective things for trying to talk through things and
8 reach resolution. So stay tuned on that is my general
9 remark.

10 So let me first take up the issue of phased
11 discovery. Should discovery be conducted in phasing -- the
12 phases beginning with threshold issues like collusion -- or
13 proceed concurrently?

14 So I think there was an overlap between the
15 plaintiffs' and defense positions on this as at the end of
16 the day, even the defendant was saying that a phased
17 approach may not be feasible at this stage, I read. And I
18 took that to heart because the issues may be so intertwined
19 that it may do not much more than to introduce just sort of
20 delay and redundancy and overlapping and so on. And I
21 haven't been on the bench that long and I couldn't believe I
22 almost forgot my own experience with such.

23 So I'm not going to phase discovery. And so just
24 to know that. Once discovery starts, it is going to be one
25 stage, and that one stage will be called discovery. And the

1 discovery will be on all things. It will be on the merits
2 discovery. It will be class discovery. It will be all
3 discovery.

4 And I understand that not phasing any aspect of it
5 means there could be a larger volume of depositions and documents.
6 It will probably mean having to retain certain experts
7 earlier because you'll be then focusing on both class and
8 merits stuff earlier in the case since that won't be phased.
9 That's fine. I think I just want to get all the discovery
10 done to have it out; and then once the discovery is
11 finished, we'll sort out the various motions. But discovery
12 at that point at least will be finished.

13 The plaintiff has projected 15 months to do all
14 the discovery and, Mr. Buterman, does that seem like too
15 much time to you?

16 MR. BUTERMAN: No, Your Honor.

17 THE COURT: That was a joke, Mr. Buterman.

18 (Laughter)

19 THE COURT: And so -- so that's certainly, you
20 know, tight, and I am going to revisit the -- what the
21 schedule should be after today, but -- but I see it taking
22 kind of easily 18 to 24 months with the discovery. But
23 we'll see. It will, in all likelihood, be less than you
24 want, but there will always be the window to kind of show
25 cause for why it should be extended because I'd like to see

1 you kind of getting after it. If the discovery window were
2 three years, I'm pretty sure discovery would take three
3 years, and then there would be a motion to extend it. So I
4 know that also. So I'm not going to phase discovery.

5 The other thing that I wanted to say too in not
6 phasing discovery, at our last proceeding, I was
7 contemplating staying discovery for the motions to dismiss.
8 I have now thought more about that as well, and so I won't
9 do that either.

10 So once the discovery period begins, I know there
11 will be motions to dismiss. I will take those up in due
12 course, but I want to go ahead and get after the discovery.
13 And even while you are awaiting to get the rulings and
14 formal orders from the Court on who is in what leadership
15 position -- and I'll tell you who is where in the proceeding
16 today -- but you can certainly be getting ready on your ESI
17 protocols and the rest because you know it's coming so...

18 You know, from all -- and you all are, by the way,
19 very experienced and impressive. I really did enjoy reading
20 the applications for the plaintiffs' steering committee.
21 It's a -- you know, your, I think, clients should be proud
22 with the kind of expertise that you have here in this room.
23 But it was clear to me that most of you have been to quite a
24 few rodeos, and this is also a horse you have ridden before
25 as well.

1 So I can tell you that you know that the ESI
2 issues are coming up, but you already know that, and so
3 there's no point in just kind of waiting to get that going.

4 All right. So I will take under advisement each
5 of the proposed schedules from each side but know that when
6 the schedule comes out, it will be, in all likelihood, in
7 the ballpark of 18 to 24 months for the discovery window and
8 period.

9 Now, I read in some detail the proposals for the
10 leadership committees and that is with respect to the
11 plaintiffs' subgroups and the plaintiffs' steering committee
12 and as well the defense position. And I understood that the
13 defense wasn't altogether sure you even needed a steering
14 committee. And you may be right, ultimately. But I feel it
15 is better to have it and not need it than need it and not
16 have it.

17 And at this point, I don't really know what we're
18 going to be dealing with in this case. I'm pretty sure that
19 if I asked the plaintiffs, they would tell me that they are
20 planning to prove up per se kind of violations, and we'll
21 see about that. But if it isn't that kind of case and this
22 devolves into talking about product markets and geographic
23 markets and proving injuries and damages, I'm not sure that
24 it wouldn't be all -- wouldn't be helpful to have
25 coordination on the defense side because I don't know to

1 what extent you are the same with respect to some of those
2 issues. So we have a structure, in any event, if it's
3 needed.

4 Now, having said that, let me talk about the
5 leadership. As I said, I reviewed all of your papers and
6 took into account the directions and guidance of Rule 23(g).
7 And here is my ruling on the plaintiffs' steering committee.
8 It will be an appointment that will be for one year; and at
9 the end of one year, you have to re-up and reapply and
10 basically say something about what you've done for why you
11 should continue to be doing it after a year.

12 I have had an experience, not as a judge but as a
13 practitioner, where I have seen at least a person appointed
14 to a plaintiffs' steering committee and I saw them the day
15 they were appointed and I saw them again when their name was
16 in the newspaper for the appointment and I didn't see them a
17 whole lot after that. And that wasn't you, Mr. Gustafson,
18 just so you know.

19 (Laughter)

20 THE COURT: But I have seen it before, but I do
21 want an active, you know, plaintiffs' steering committee.
22 And there are cases too where you have certain members who
23 are experienced and wise and so on who might be better
24 serving in an advisory role or something, but...

25 So we'll take a year -- a look back after the

1 year. As well, I don't know how well the different members
2 will work together on the committee either, and that's
3 pretty important.

4 So here are the firms -- I limited it to seven --
5 on the plaintiffs' steering committee with the idea that I
6 wanted competent, capable members but not so big you can't
7 get anything done and can't meet, so I'll list the firm but
8 the appointment is to the individual on the plaintiffs'
9 steering committee.

10 So the Gustafson firm, and, Mr. Gustafson, I'm
11 sorry, but it is you, Mr. Gustafson, who is named, Dan
12 Gustafson.

13 Robins Kaplan, Stacey Slaughter.

14 And if I mispronounce any name, then you all
15 please correct me because we'll be together a while.

16 Is it Lowey Dannenberg?

17 Okay. Peter, is it Ba-ril (phonetic)?

18 MR. BARILE: Ba-ril (phonetic), yes, Your Honor.

19 THE COURT: Yes, Peter Barile.

20 Lockridge Grindal, Heidi Siltan.

21 Freed Kanner, Kimberly Justice.

22 Fegan Scott. Is it Fee-gan (phonetic) or Fay-gan
23 (phonetic)?

24 MS. FEGAN: Fay-gan (phonetic), Your Honor.

25 THE COURT: Fay-gan (phonetic), all right. Okay.

1 MS. FEGAN: Thank you.

2 THE COURT: Elizabeth Fegan.

3 MS. FEGAN: Yes.

4 THE COURT: The Roberts Law Firm, U.S., Michael
5 Roberts.

6 (Mr. Roberts stands up.)

7 THE COURT: All right. Okay. So the plaintiffs'
8 steering committee will then be tasked with appointing a
9 liaison counsel from among its members to act as the primary
10 contact for communications and coordination with the
11 defendants' steering committee, with the plaintiffs'
12 subgroups, which I'll talk about here in just a moment, and
13 with the Court.

14 The liaison counsel should be appointed within
15 30 days of this order and included in the status report --
16 the next status report to the Court.

17 Now, as for the defendants' steering committee,
18 there are no surprises here that Mr. Buterman with United
19 Sugar Producers and Refiners Coop at Latham, and -- you're
20 the liaison, Mr. Buterman?

21 I guess I should say that and it not sound like a
22 question.

23 MR. BUTERMAN: Understood, Your Honor.

24 THE COURT: So ASR Group International, American
25 Sugar Refining, and you'll have to help me with this. Is it

1 Georgie (phonetic)?

2 MR. PETKOSKI: It's George (phonetic), Your Honor.

3 THE COURT: Djordje. And is it Pet-kos-kee
4 (phonetic)?

5 MR. PETKOSKI: Pet-kos-kee (phonetic), perfect.

6 THE COURT: Okay. All right. Mr. Petkoski.

7 Cargill, all right, and there's Kosta --

8 MR. STOJIKOVIC: Stoy-yoke-a-vich (phonetic),
9 Your Honor.

10 THE COURT: Kosta Stojilkovic.

11 And Michigan Sugar Company, and Vanessa Jacobsen.

12 All right. So that's the defense group.

13 Now, for the plaintiffs' subgroup committees --

14 I'm telling this to you all now, but I will convert it into
15 an order.

16 The following firms are appointed to serve as
17 co-leads on the plaintiffs' subgroup committees representing
18 the direct purchaser plaintiffs, the indirect consumer
19 purchaser plaintiffs, and indirect commercial purchaser
20 plaintiffs.

21 So the first subgroup for direct purchaser
22 plaintiffs will be the Gustafson Gluek firm and the Roberts
23 Law Firm as co-lead for the direct purchaser plaintiffs.

24 For the indirect consumer purchaser plaintiffs:
25 Robins Kaplan, Lowey Dannenberg, and Fegan Scott.

1 And then for the indirect commercial purchaser
2 plaintiffs: Lockridge Grindal, Freed Kanner, Larson King,
3 Cuneo Gilbert, Zimmerman Reed, and the Tostrud Law Group.

4 Now let me say a few words about how the subgroups
5 are expected to work with the plaintiffs' steering
6 committee, and this relates to the authority and oversight
7 structure for the plaintiffs' steering committee and
8 subgroup leadership.

9 So I want to ensure that the plaintiffs' steering
10 committee retains the ultimate authority and strategic
11 control over the litigation and that the subgroups don't
12 just take off and -- kind of on their own and have a weak
13 plaintiffs' steering committee and then it creates chaos and
14 disorder and it's not clear who the defendants should be
15 dealing with and, as well, the various subgroups start to
16 work in cross-purposes and it becomes confusing. So I want
17 the ultimate authority and the strategic control to remain
18 in the plaintiffs' steering committee, which will be the
19 central authority. And the plaintiffs' steering committee
20 will have authority over all decisions affecting litigation
21 strategy, settlement negotiations, and interactions with
22 the -- the defendant steering committee.

23 The subgroup co-leads will provide advisory
24 support specific to their plaintiff's interest, but must
25 defer to the plaintiffs' steering committee on all major

1 decisions. So the subgroup co-leads in general then may
2 manage routine activity for their respective plaintiff
3 classes, including subgroup-specific discovery and
4 communications with clients and law firms within the
5 subgroup.

6 The subgroups should organize themselves and may
7 appoint whatever the roles and/or committees as they feel
8 appropriate to achieve their purposes. But -- and this is
9 with a capital B -- the subgroups are required to have the
10 approval of the plaintiffs' steering committee for all major
11 strategic decisions, including, but not limited to,
12 settlement proposals, dispositive motions, and expert
13 witness selection.

14 The plaintiffs' steering committee liaison counsel
15 will be responsible for coordinating all subgroup activities
16 and ensuring effective communications between both the
17 plaintiffs' group, the plaintiffs' subgroups, the defense
18 steering committee, and the Court. And I'll ask at each
19 status hearing from the liaison counsel for an update from
20 the liaison counsel. And I just want to make sure that the
21 various subgroups remain aligned and that there are no
22 issues there and to try to monitor that.

23 There will need to be a common benefit fund
24 established to compensate those who work for the benefit of
25 the MDL on the plaintiffs' side, and I'm going to solicit

1 the input from the plaintiffs' steering committee to confer
2 with counsel representing the various plaintiff classes.
3 And I want to hear from you on the percentage of assessment
4 on recoveries to be allocated to the common benefit fund.
5 And I'll hear from you before I decide what that is. And I
6 will oversee the common benefit fund and approve all the
7 payments to counsel for common benefit work.

8 And having said that, to the extent we're talking
9 about the time and expense, there will be a requirement for
10 reporting, as some of you are used to from other litigation,
11 that I'll ask on a quarterly basis for reports for the work
12 that's been performed that might be subject to the common
13 benefit fund where it commonly benefits all the plaintiffs,
14 and I will specify what should be in that report.

15 So I may ultimately -- I haven't decided yet, but
16 I may ultimately appoint a -- either a fee committee or even
17 a special master to review and recommend appropriate
18 compensation for all the submitted time and expenses.
19 That's down the road a little bit for me. But it's in the
20 back of my mind in thinking about what to do and just
21 haven't decided yet.

22 So I will reserve the right to review and approve
23 all appointments made by the plaintiffs' steering committee
24 and/or the defense, which you are free also to create any
25 specialized roles. And I certainly encourage you to create

1 any roles that will make more room for junior attorney
2 participation in this, and each steering committee is free
3 to do that, but I want to make sure that everything remains
4 aligned so that the litigation just remains efficient and
5 fairly managed. But I do encourage you to create spaces
6 that -- where junior attorneys, less experienced attorneys,
7 can have roles that actually sometimes brings them up to the
8 podium.

9 You know, I sometimes have hearings on issues that
10 I might otherwise decide on the papers but I will kind of
11 have oral argument but only if a junior lawyer can argue it.
12 And it's fine then to have one of the more senior ones
13 shadow them if need be, but it's hard nowadays for the more
14 junior lawyers to get on their feet, to have an opportunity
15 to present in a court. And I want to encourage that when
16 and where I can.

17 So in terms of the duties and responsibilities of
18 plaintiffs' and defendants' steering committees, that's been
19 set forth in an earlier PTO, and I don't think there's
20 anything earth-shattering in it. It's what you all know
21 from having done this before in terms of what you do. But
22 you'll see that again referenced in the order when I submit
23 the order.

24 So all of the appointments, again, are for one
25 year. And each firm on the steering committees, on the

1 plaintiffs' steering committee and defense steering
2 committee, will reapply annually to ensure your continued
3 dedication, alignment with litigation needs, and adherence
4 to any standards set by the Court.

5 So I will stop there and allow each side to either
6 comment or let me know if you have questions.

7 MR. GUSTAFSON: Would you like me to start, Judge?

8 THE COURT: Please.

9 MR. GUSTAFSON: Thank you for that.

10 Again, for the record, Dan Gustafson on behalf of
11 Northern Frozen Foods and the plaintiffs. We understand
12 your order. We'll look for it in writing.

13 There were a couple things that I thought should
14 be added to PTO Number 3 in your list of duties. It should
15 have a provision about selecting and retaining experts, in
16 my view. It should have a provision of the ability to
17 assess other counsel to pay for those common expenses.

18 You reference common benefit fees and expenses,
19 but this is a situation in which money is going to have to
20 be advanced by the plaintiffs' bar to pay for experts before
21 there's a fund for which to pay those expenses. And as you
22 know, we normally do that by assessing each firm that's
23 involved and we put that money in an escrow account and we
24 use it to pay experts. We're happy to have you oversee that
25 or be privy to the payments that are made, but the power to

1 assess those counsel should be included in them.

2 I think this is implied of course, but the power
3 to make decisions, strategy decisions about the consolidated
4 complaint should probably be in there. By the way, Judge, I
5 understand you have a catchall provision in that order that
6 says all the power necessary to do the job you're supposed
7 to do, and so maybe that covers all of this, but those are
8 things that you might want to consider adding.

9 THE COURT: And what I'm thinking too,
10 Mr. Gustafson, is that I may well push the order out kind of
11 as is, and I may ask you to speak with the other members of
12 the PSC and just send a proposal to the Court and I will
13 amend it.

14 MR. GUSTAFSON: Yeah, all right. That would be
15 great, Judge, I think because -- because I do think there
16 are some things.

17 The last thing I was going to say was, I fully
18 expect to try this case if you don't grant summary judgment
19 for the plaintiffs and order that we don't need a trial and
20 the defendants should just pay. But I think there might be
21 a reference -- should maybe be a reference to trial,
22 selecting trial counsel, things like that, in the power of
23 the PSC.

24 So those were the things that I would add or
25 suggest that get added.

1 THE COURT: No. Thank you.

2 And, again, what I'll do is I think I will leave
3 the door open for both the PSC and the DSC, to the extent
4 you think there are other things that will be added, to
5 submit and propose those to the Court kind of afterward and
6 I will take them up.

7 MR. GUSTAFSON: Perfect. Perfect.

8 THE COURT: That way I don't hold up the show
9 because I'd like to otherwise get this -- get the ball
10 rolling.

11 MR. GUSTAFSON: Yeah. As I understood your order,
12 you want the PSC to select liaison counsel.

13 THE COURT: Mm-hmm.

14 MR. GUSTAFSON: And I think that's fine. Then we
15 will get that to you promptly. We could do it yet this week
16 or we could do it yet today probably. I don't think it will
17 be hard to make that selection.

18 But I was just going to suggest that you make that
19 liaison person the chair of the PSC for the sole purpose of
20 getting meetings together and all the rest of it. It's
21 always good to have somebody in charge of scheduling --

22 THE COURT: Are you concerned that the -- because
23 the PSC can organize itself --

24 MR. GUSTAFSON: Yeah.

25 THE COURT: -- and designate whomever as chair.

1 You're concerned that if I don't do it, you won't
2 agree on it?

3 MR. GUSTAFSON: No, we'll agree on it for sure.
4 We just want to -- we just want to make sure you're aware of
5 it.

6 THE COURT: Yeah, you know, you have that
7 authority to do that.

8 MR. GUSTAFSON: Yeah, okay.

9 The last thing I would say to you, Judge, is the
10 PSC has people from each track, and your comments about the
11 subgroups working at the behest of the PSC I understand and
12 agree with. But we need to make sure that like me, as
13 counsel for the direct purchasers, doesn't overrule
14 something the consumers are doing, because there's going to
15 be situations in which the consumers make choices that I
16 wouldn't necessarily make as a direct purchaser. And so we
17 just need to be cognizant of that in how we frame the order
18 and you giving us a chance to suggest some wording on that
19 will be helpful.

20 THE COURT: No. That's fine. And thank you for
21 bringing that up too, because I don't mean to suggest that
22 to the extent there are areas where there isn't an
23 agreement, that it can't be brought to the Court, you know,
24 when all is said and done. Because I will take them up at
25 the status conference or in between as well if you reach a

1 point where you all aren't of one mind and there simply has
2 to be a call made, then --

3 MR. GUSTAFSON: Certainly.

4 Let me just say on that issue, Judge, I think I
5 know every single lawyer in this room. That's a privilege
6 of being older. And this group will work together. We have
7 a common goal to represent our clients for the benefit of --
8 of winning the case, and I think that those kinds of
9 disagreements that you just described will be very few, if
10 any, ever in the case because we've done this for a long
11 time and we know how to work those things out. But we
12 always have to guard against the potential conflicts that
13 arise when you have different groups that have slightly
14 different requirements and things like that, so...

15 THE COURT: And for that matter, I understand that
16 the structure that I am constructing now works for the
17 litigation at this phase. That I'm looking forward to the
18 discovery and working through the expert stuff. I'm not
19 sure that this doesn't in some ways evolve as the case
20 matures. And so I think we just kind of start and then we
21 see kind of how well it fits.

22 MR. GUSTAFSON: Very well. That's all the
23 comments I have, Your Honor. Thank you.

24 THE COURT: All right. Thank you, Mr. Gustafson.
25 Mr. Buterman.

1 MR. BUTERMAN: Thank you, Your Honor.

2 The only comment the defendants have is with
3 respect to discovery, and we understand Your Honor's ruling
4 that discovery will proceed.

5 We would -- we certainly believe that there are
6 things like the ESI protocol, the protective order that
7 irrespective of what's in the consolidated amended
8 complaints we would need to get going on and we certainly
9 will work with the plaintiffs on that.

10 With respect to substantive discovery, we would
11 request that at a minimum we see what's in the amended
12 complaints before we start getting discovery requests. As I
13 mentioned at the last conference, for instance, Your Honor,
14 my client, United, hasn't even spoken to Mr. Wistisen in two
15 years. So if I start getting discovery for -- you know, for
16 communications and doing searches for --

17 THE COURT: And, Mr. Buterman, just to be clear,
18 and I probably wasn't -- no, I wasn't. Not probably, I
19 wasn't clear -- is that the discovery would commence as of
20 the time you have the complaint at least.

21 MR. BUTERMAN: Okay.

22 THE COURT: Because you're not going to be
23 answering discovery completely in the dark. It's
24 potentially relevant to what if you don't have the
25 complaint?

1 MR. BUTERMAN: That -- thank you, Your Honor.

2 Okay. Thank you.

3 THE COURT: So we'll certainly do that.

4 MR. BUTERMAN: Thank you.

5 THE COURT: Mr. Gustafson.

6 MR. GUSTAFSON: We agree with that, Judge.

7 THE COURT: Well, that makes it right.

8 (Laughter)

9 THE COURT: All right. Let me see. There are, I
10 think, a number of motions that are pending yet that have to
11 do with consolidating complaints and other things. I'm
12 going to let those sit for a minute, but I'm probably going
13 to clear those up at our next status hearing and most will
14 go away as moot, I think, since they are more or less asking
15 for what I'm doing now.

16 Does anyone have anything else that we need to
17 take up this afternoon? Mr. Gustafson?

18 MR. GUSTAFSON: Your Honor, real quickly.

19 I do think you could dismiss all the pending
20 motions as moot based on what you did today. And if we have
21 anything we need to file, we'll file it. We do know how to
22 do that.

23 The one thing I wanted to make sure that I --

24 THE COURT: Let me stop first and see if anybody
25 here disagrees with you on that score.

1 Mr. Buterman, do you care?

2 MR. BUTERMAN: We certainly have no position on
3 that, Your Honor.

4 THE COURT: All right. All right. Then that's
5 what I'll do, not hearing any objections to that.

6 MR. GUSTAFSON: Your Honor, I want to make clear,
7 and I think I understood your order to include this, but I
8 want to make clear that the PSC has the authority to employ
9 lawyers who are not on the PSC or not on the subgroup to
10 work. You mentioned younger lawyers. We all endeavor to do
11 that. We think that's great that you are supportive of
12 that.

13 We will talk to your court folks when motions come
14 up and tell them when we have young lawyers coming up so
15 that you can help make decisions about oral argument. But
16 there will be people who are not named to one of those
17 leadership spots who will work on these cases and ultimately
18 will submit time for reimbursement.

19 THE COURT: And that's expected actually too. And
20 there will be rules of reason, and at some point of course
21 I'll want to know who and what -- what they are doing on the
22 case. But the plaintiffs' steering committee is meant to be
23 that, a committee that steers. You're able to appoint
24 others to do things. You're able to create committees, et
25 cetera. And what I hope to do each month is be able to

1 check in on what's kind of happening where and thinking that
2 surprises aren't in the best interests of the Court or you.

3 But I do understand there will be others that will
4 be employed in different roles, and I didn't put more on the
5 steering committee because I thought it would be unwieldy to
6 get things done. But I thought there were many others in
7 here who were qualified to have been on it.

8 MR. GUSTAFSON: Thank you, Your Honor.

9 As to the status conferences, we are -- we are
10 happy to meet and confer. We're happy to come to the
11 courthouse and meet and confer. I think you'll find that
12 we're going to work out far more disputes than you're used
13 to, or maybe not used to, but we're going to work out a lot
14 of disputes.

15 This group of defense lawyers are professionals.
16 This group of plaintiffs' lawyers have been around a long
17 time. And we're going to work out most of the disputes that
18 we have. And when we -- when we do have disputes, we're
19 going to be able to brief them up clearly and discretely so
20 that you can -- you or Magistrate Judge Schultz can rule on
21 them. And so, happy to come here and have those meet and
22 confers, but they will occur before we get here for sure.
23 We are not letter writers by nature.

24 THE COURT: Yeah, we'll just see how it all
25 evolves, you know.

1 MR. GUSTAFSON: Yes.

2 THE COURT: And I'm hoping that you are right. I
3 think the start of every litigation begins with statements
4 just like that.

5 (Laughter)

6 THE COURT: And --

7 MR. GUSTAFSON: I'm looking forward to the
8 opportunity to show you that it's true.

9 (Laughter)

10 THE COURT: And I had certainly many a case where
11 the joint status letters were supposed to go in and, you
12 know, we can't seem to get our part in until late in the
13 day, and then they don't want to submit exactly what you
14 said. So there's a lot of what I call kind of pitty pat
15 stuff that can happen in litigation that I want to keep
16 down.

17 And I say, I hope it's not necessary. And I don't
18 mean to suggest that all your issues will be simple ones
19 that you could resolve just by discussing. You're going to
20 have hard things to work through, and there's going to be a
21 lot of it if all the discovery is kind of happening at once.

22 And so I just want to create maximum opportunity
23 for you to get in the room and discuss and then to have the
24 Court there to make rulings kind of on the spot even and the
25 day before to keep the ball rolling and to keep it moving.

1 And it will help to keep the, I think, relationships
2 collegial too. If calls just get made, there's no point
3 then giving any more thunder to an issue when the Court's
4 already decided it.

5 MR. GUSTAFSON: Agreed.

6 Two more things, Judge. I wouldn't mind it a bit
7 if you put a 5:00 p.m. deadline for filings on the day
8 things are due. I think electronic filing has been a great
9 addition, and it has allowed us to work remotely and do all
10 sorts of things, but having people file things at 11:35 or
11 11:55 p.m. has never been good for anyone's work-life
12 balance. So if you want to put that 5:00 p.m. deadline in,
13 just like when the courthouse had to have the paper, we'd be
14 good with that.

15 The last thing I would say, Judge, is that the
16 November 25th conference, it just doesn't -- I talked with
17 Mr. Buterman before the conference. We just don't see
18 anything there because the consolidated complaint is not
19 going to be done yet. It's 40 days from the order, which
20 even if you put it today, it's not going to be then. So we
21 think it would probably be better off to put that one off.

22 But, again, you're the Judge, so if you want to
23 see us, we're happy to come in.

24 THE COURT: And I'm -- I always want to see you.

25 So why don't we just see kind of what evolves and

1 you'll no doubt give me a status report, and I may pull it
2 if there's no reason to meet. I don't --

3 MR. GUSTAFSON: Yeah, just to think about, Judge.
4 It might be more useful to have something around, you know,
5 the 12th or 15th of December, somewhere in there, after the
6 consolidated complaint has been filed and we're off and
7 running, because then we can avoid all the holidays and be
8 ready to see you and talk about what's -- what the issues
9 are. Thank you, Your Honor.

10 THE COURT: I hear you, and I will take it under
11 advisement.

12 MR. GUSTAFSON: Thank you.

13 THE COURT: Does anyone have anything else then?
14 Mr. Buterman?

15 MR. BUTERMAN: Thank you, Your Honor.

16 Just that we did confer, and I think that we
17 certainly will work together to put in a status conference
18 letter and with maybe a recommendation to Your Honor, if
19 Your Honor's willing to accept it, as to whether there's a
20 need for the conference coming up on the 25th.

21 THE COURT: On the 25th. And, Mr. Buterman, that,
22 to me, will apply to any of the conferences, frankly. I put
23 them in here as plug dates so that we know what to expect,
24 but if you can already see well ahead of time there won't be
25 a need for this one or that one, at least let me know that's

1 your perspective and I will take it under advisement.

2 MR. BUTERMAN: Thank you, Your Honor.

3 And then while I appreciate the work-life balance
4 issue, for the defendants, we have people all across the
5 United States. We would respectfully request that the
6 normal deadlines apply and so that it would be the day of.
7 Even if that is 11:59, that will fall on us.

8 THE COURT: All right. So I've heard
9 Mr. Gustafson and I've heard you.

10 MR. BUTERMAN: Thank you.

11 THE COURT: And will take it under advisement.

12 So, now, is there anything further?

13 MR. GUSTAFSON: Nothing further from plaintiffs,
14 Your Honor.

15 MR. BUTERMAN: Nor from the defendants,
16 Your Honor.

17 THE COURT: All right. Thank you all. Good to
18 see you, and we'll stand adjourned.

19 MR. GUSTAFSON: Thank you, Your Honor.

20 (Court adjourned at 1:55 p.m.)

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2 I, Erin D. Drost, certify that the foregoing is a
3 correct transcript from the record of proceedings in the
4 above-entitled matter to the best of my ability.
5

6 Certified by: s/ Erin D. Drost

7 Erin D. Drost, RMR-CRR
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